In the Supreme Judicial Court of the State of Maine.

RIGHT OF SUFFRAGE OF PERSONS OF AFRICAN DESCENT.

Free colored persons, of African descent, having a residence established in some town in this State, for the term of three months next preceding any election, are authorized under the provisions of the Constitution of Maine, to be electors for Governor, Senators and Representatives—they being otherwise qualified according to law.

The Justices of the Supreme Judicial Court[1] respectfully present their opinion in answer to the interrogatory addressed to them by the order of the Senate under date of March 26, 1857.[2]

The interrogatory, as propounded, is very comprehensive in its terms, and includes "free colored persons of African descent, having a residence established in some town in this State, for the term of three months next preceding any election," &c., whether such persons are men, women, children, paupers, persons under guardianship, or unnaturalized foreigners.

Presuming it to have been the intention of the Senate to confine the inquiry to free colored male persons of African descent, who are twenty-one years of age and upwards, and who are possessed of the other qualifications requisite to constitute a white citizen a voter, we will proceed to answer.

Art. ii, § 1, of the constitution of Maine, provides that

"Every male citizen of the United States, of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election, shall be an elector for Governor, Senators and Representatives in the town or plantation where his residence is so established."

This raises for our consideration the distinct question, whether free native born colored persons, of African descent, are recognized as "citizens of the United States," in the above provision of the constitution.

The political status of that portion of the African race in this country, which is not in a state of slavery, has long been matter of

[1] Tenney, Ch. J., Rice, Cutting, May, Goodenow, J. J.

[2] This question was propounded in the terms which are set forth in the head note above.

contestation, not only among politicions, but to some extent also among courts and jurists.

Chancellor Kent, in a note to the 257th page of the second volume of his Commentaries, 4th edition, says

"Citizens, under our constitution and laws, mean free inhabitants born within the United States, or naturalized under the laws of Congress. If a slave, born in the United States, be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under such disablities as the laws of the States respectively deem it expedient to prescribe to free persons of color."

This doctrine, though supported by high judicial authority, is by no means universally admitted. Courts and jurists of high respectability and authority, have denied that negroes of African descent, whose ancestors were of pure African blood and were brought into this country and sold as slaves, are or can become citizens of the United States, within the meaning of the constitution of the United States. This doctrine has recently been maintained with much zeal, and at great length, in the case of *Dred Scott* vs. *Sandford*, 20 Howard's U. S. R., 393. Substantially the same doctrines have been promulgated in *Amy* vs *Smith*, 1 Littell's Ken. R. 333; *State* vs. *Claiborne*, 1 Meigs' Tenn. R. 331; *Pendleton* vs. *State*, 1 Eng. Ark. R. 509; *Cooper* vs. *The Mayor of Savannah*, 4 Geo. 68; and by DAGGETT, C. J. in *State* vs. *Crandall*, 10 Conn. 340, in Connecticut.

As to the correctness of those decisions, we express no opinion. Each must stand upon its own intrinsic merits, and they will undoubtedly receive that degree of respect to which, as legal productions, they are justly entitled.—They do not, however, affect the question now before us.

Our present inquiry is confined to an interpretation of the provision in our own constitution already cited, and the term "citizen of the United States," as used therein.

Art. iv, § 1, of the constitution of the United States, provides that

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Our inquiry therefore extends not only to the rights of free

colored persons of African descent who were born within this State, but also to the same class of persons who may have been born in other States, but who have become residents of this State.

Chief Justice Taney, in the opinion of the majority of the court in the case of *Dred Scott* vs. *Sandford*, cited above, lays down the following propositions as to citizenship of the United States:

Rawle, in his Commentaries, says:

"It is true every person, and every class and description of persons, who were at the time of the adoption of the constitution, recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guarantied to citizens of this new sovereignty, were intended to embrace those only who were then members of the several State communities, or who should afterwards, by birthright or otherwise, become members according to the provisions of the constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities, into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States. And it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States."

"The citizens of each State constituted the citizens of the United States when the constitution was adopted. The rights which appertained to them as citizens of those respective commonwealths accompanied them in the formation of the great, compound commonwealth, which ensued. They became citizens of the latter without ceasing to be citizens of the former, and he who was subsequently born a citizen of a State, became, at the moment of his birth, a citizen of the United States." *Rawle on the Const.* p. 86.

"Every citizen of a State, is, *ipso facto*, a citizen of the United States." *Story on the Const.*, vol., 3, p. 565.

Such being the operation of that provision of the constitution of the United States which we have cited above, upon the condition of those persons who were recognized as citizens of the several States at the adoption of the constitution, it becomes pertinent to our inquiry to ascertain the political condition of the free colored people of African descent in the several States, at that time. Were they then recognized as citizens of any of the States which entered into and composed a part of the United States? Let the constitutions

of the States then existing, and the practice under them, answer. The fact of citizenship may be established in various ways. The enjoyment of the elective franchise is believed to be one of the highest tests of that fact. There may be citizenship without the enjoyment of this right, as in the case of women, children, paupers, and the like; but it is believed no instance can be found in which the right to vote at our general elections has been conceded to persons born on our soil who were not at the time deemed citizens of the States in which they enjoyed the right.

The constitution of the United States was adopted September 17, 1787.

The constitution of New York, adopted April 20, 1777, section 7, provides

"That every male inhabitant of full age, who shall have personally resided in one of the counties of this state for six months immediately preceding the day of election, shall at such election be entitled to vote for representative in said county in assembly; if during the time aforesaid, he shall have been a freeholder possessing a freehold of the value of twenty pounds, within said county, or have rented a tenement therein of the yearly value of forty shillings, and been rated and actually paid taxes to the State."

By the constitution of New York, adopted in 1821, Art. xi, § 1, the qualification of electors was to some extent modified; the word "citizen" was substituted for the word "inhabitant," and other modifications made, among which was added the following clause:

"But no man of color, unless he shall have been three years a citizen of this State, and for one year next preceding any election shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars over and above all debts and incumbrances charged thereon, and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at any such election."

The old constitution did not contain this provision discriminating against the "man of color."

The constitution of New Jersey, adopted July 2, 1776, § 4, provides,

"That all inhabitants of this colony, of full age, who are worth fifty pounds, proclamation money, clear estate in the same, and have resided within the county in which they claim a vote for twelve months immediately preceding the election, shall be entitled to vote for representatives in council and assembly; and also for all other public officers that shall be elected by the people of the county at large."

In 1844, the constitution of New Jersey was amended, and the elective franchise was restricted to "white male citizens of the United States."

Maryland adopted a constitution in 1776, the second section of which provides that

"All freemen above twenty-one years of age, having a freehold of fifty acres of land in the county in which they offer to vote, and residing therein, and all freemen having property in this State above the value of thirty pounds, current money, and having resided in the county in which they offer to vote one whole year next preceding the election, shall have a right of suffrage in the election of delegates for such county."

And by the fourteenth section *all persons* qualified as aforesaid to vote for delegates, were also made electors of senators.

The constitution was so amended in 1801–2 that the right of suffrage was confined to "free white male citizens above twenty-one years of age, and no others."

North Carolina adopted a constitution Dec. 18, 1776. This constitution contains the following provisions:

"SECT. 7. That all freemen of the age of twenty-one years, who have been inhabitants of any one county within the State twelve months immediately preceding the day of any election, and possessed of a freehold within the same county of fifty acres of land, for six months next before, and on the day of election, shall be entitled to vote for a member of the senate.

"SECT. 8. That all freemen of the age of twenty-one years, who have been inhabitants of any county within the State twelve months immediately preceding the day of election, and shall have paid taxes, shall be entitled to vote for members of the house of commons for the county in which he resides.

"SECT. 9. That all persons possessed of a freehold in any town in this State, having a right of representation, and also all freemen who have been inhabitants of any such town twelve months next before, and at the day of election, and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the house of commons."

In 1835, the following amendment was adopted touching the right of suffrage:

"No negro, free mulatto, or free persons of mixed blood descended from negro ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) shall vote for members of the senate or house of commons."

In the case of *State* vs. *Manuel*, decided by the Supreme Court of North Carolina, in 1838, 2d Dev. & Bat., 20, GASTON, J., in a very elaborate opinion of the Court, uses the following language:

"Before our Revolution, all free persons born within the dominions of the King of Great Britain, whatever their color or complexion, were native born British subjects; those born out of his allegiance were aliens. Slavery did not exist in England, but it did exist in the British colonies. Slaves were not in legal parlance persons, but property. The moment the incapacity or disqualification of slavery was removed, they became persons, and were then either British subjects or not British subjects, accordingly as they were or were not born within the allegiance of the British King. Upon the Revolution no other change took place in the law of North Carolina, than was consequent upon the transition of a colony dependent on an European King, to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina became North Carolina freemen. Foreigners, until made members of the State, continued aliens. Slaves manumitted there become freemen—and therefore if born within North Carolina, are citizens of North Carolina—and all free persons born within the State, are born citizens of the State."

Again, he says:

"That constitution [1776] extended the elective franchise to every freeman who had arrived at the age of twenty-one, and paid a public tax; and it is a matter of universal notoriety that under it, free persons, without regard to color, claimed and exercised the franchise until it was taken from free men of color, a few years since, by our amended constitution."

The soundness of the doctrine of this opinion has since been recognized by the same court in the case of *State* vs. *Newsom*, 5 Iredell, 250.

Sect. 2 of ch. 1 of the constitution of Massachusetts, adopted in March, 1780, reads as follows:

"The senate shall be the first branch of the legislature, and the senators shall be chosen in the following manner, viz.: there shall be a meeting on the first Monday in April, annually, forever, of the inhabitants of each town in the several counties in this commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and councillors; and at such meetings every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word 'inhabitant,' in this constitution, every person shall be considered an

inhabitant, for the purpose of electing and being elected into any office, or place within the State, in that town, district, or plantation, where he dwelleth, or hath his home."

Slavery has not existed in Massachusetts since the adoption of the constitution, in 1780; *Com.* vs. *Aves*, 18 Pick. 193. And from that day to the present, those freemen of African descent, who possessed the qualifications required of white citizens, have enjoyed the rights of the elective franchise in that State.

The constitutions of other States, adopted before and since the formation of the present federal government, contained provisions equally broad and liberal, with reference to the right of voting, as those from which we have already quoted; while in others of the thirteen States which originally composed the Union, the right of voting in the general elections was confined to "free male white citizens." The same formula of words is also used to limit and define the rights of electors in several of the constitutions of States which have been created and admitted into the Union since the constitution of the United States was adopted, and also in sundry laws passed by Congress under the constitution. Whether this form of words does not carry the implication that "citizens" exist who are not *white*, we do not deem it important now to consider, nor do we deem it essential to pursue this branch of our inquiry further at this time.

Such was the condition of things in 1820, when Maine, then constituting a part of the State of Massachusetts, was erected into a new and independent State, and her citizens, after having lived under the constitution of 1780, for a period of forty years, formed the constitution under which we now live. The convention which formed that constitution was composed of our most intelligent and influential citizens. Every important provision in that instrument was closely scrutinized before it was adopted. Nor did the section which prescribed the qualification of electors pass unchallenged. When that section was under consideration, Mr. Vance, of Calais, moved to insert the word "Negroes" after the words "Indians not taxed."

Mr. Holmes said:

"The 'Indians not taxed,' were excluded, not on account of their color, but of their political condition. They are under the protection of the State, but they can make and execute their own laws. They have never been considered members of the body politic. But I know of no difference between the rights of the negro and the white man. God Almighty has made none—our Declaration of Rights has made none. That declares that 'all men' (without regard to colors) 'are born equally free and independent."

"Mr. Vance and Dr. Rose spoke in favor of the motion, but it did not obtain."—*Perley's Debates*, p. 95.

From the adoption of the constitution to the present day, it is believed there has been no instance in the State in which the right to vote has been denied to any person resident within the State on account of his color.

In view of these facts and considerations, we are of the opinion that our constitution does not discriminate between the different races of people which constitute the inhabitants of our State, but that the term "citizens of the United States," as used in that instrument, applies as well to colored persons of African descent, as to persons descended from white ancestors. Our answer, therefore, is, that

Free colored male persons of African descent, of the age of twenty-one years and upwards, having a residence established in some town or plantation in this State, three months next preceding any election, and who are not paupers, aliens, nor persons under guardianship, are authorized, under the provisions of the constitution of this State, to be electors for governor, senators and representatives.

NOTE.—This question arose in Pennsylvania, under the Constitution of 1790, which gives the right of suffrage to "every FREEMAN above the age of twenty-one years," and it was held by the Supreme Court of that State, that free negroes were *not* comprehended in those words. *Hobbs vs. Fogg*, 6 Watts, 553, decided in 1837. The course of reasoning adopted by Chief Justice Gibson, in delivering the opinion of the court, is substantially the same as that employed by judge Taney, in the famous *Dred Scott* case. The same point had arisen and been decided in the same way in 1795, at Philadelphia. See 6 Watts, 555. The present constitution uses the words "every *white* freeman."—EDS. A. L. R.